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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 617

GENERAL PRECISION, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals adjudging petitioner in civil contempt of an earlier decree of that court (Pet. App. i-xiii) has not yet been officially reported. The underlying decision and order of the Board approving a settlement stipulation and providing for the entry of a consent decree (Cuneo Aff.,

Exh. D)[1] are unreported, as is the decree of the court of appeals entered pursuant thereto (Pet. App. ii-iii).

JURISDICTION

The decision of the court of appeals adjudging petitioner in civil contempt was entered on July 13, 1967 (Pet. App. i), and the order implementing that decision (set out in the Appendix, *infra*, pp. 12-14) was entered on August 4, 1967. The petition for a writ of certiorari was filed on September 14, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The court of appeals, in a prior proceeding, enforced a Board order requiring the employer to disestablish an employees' committee which the employer had dominated and assisted, in violation of the National Labor Relations Act, and to refrain from similar action in the future with respect to any successor thereto. Thereafter, the employer set up an Employee Counselor Plan under which it assigned salaried personnel officers to represent employees prosecuting grievances against the employer. The question presented is whether the court of appeals was warranted in finding that the Employee Counselor Plan was a successor to the employees' committee,

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[1] "Cuneo Aff." refers to the affidavit filed in support of the Board's motion for summary adjudication in civil contempt, and "Exh." to the exhibits attached thereto. A copy of these documents has been filed with the Clerk of this Court.

that by such plan the employer was continuing to dominate and interfere with the employees' collective bargaining activities, and that the employer was thus in civil contempt of the court's earlier decree.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519 (29 U.S.C. 151 *et seq.*), are set forth in the Appendix to the petition (pp. xiv-xv).

STATEMENT

Prior to August 1965, the hourly employees at petitioner's New Jersey plants were represented by the Hourly Employees Committee, the principal functions of which were to "assist" hourly employees in the "orderly presentation of a complaint or grievance" and to bring to management's attention "any situation or condition causing dissatisfaction amongst hourly employees" (Cuneo Aff., Exh. A, p. 1). On May 18, 1965, the Board's Regional Director issued a complaint charging that petitioner had dominated and interfered with the administration of the Hourly Employees Committee, in violation of Section 8(a)(2) of the National Labor Relations Act. On July 16, 1965, the Regional Director and petitioner entered into a settlement stipulation, under which petitioner consented to the entry of an order by the Board, and to a court decree, requiring the Company to disestablish the Hourly Employees Committee and to re-

frain from dominating or interfering with the administration of any successor organization. Petitioner also agreed to cease and desist from interfering with the employees' statutory rights "in any other manner" (Cuneo Aff., Exh. D). On August 17, 1965, the Board approved the settlement stipulation and issued the agreed-upon order, and the court below subsequently entered a decree enforcing that order on consent (Cuneo Aff., Exh. D; Pet. App. i-iii).

On August 18, 1965, petitioner mailed to each employee a copy of the notice which the Board's order directed the Company to post at its plants. In a covering letter, petitioner discussed the recent unsuccessful attempt of the United Automobile Workers Union to organize its plants [2] and traced the history of the Hourly Employees Committee. The letter stated that the "present Company policies and procedures would remain in effect except that the procedures would be revised to provide for grievance assistance and communication through channels other than the now dissolved" Hourly Employees Committee (Cuneo Aff., Exh. B).

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[2] In an effort to blunt that campaign, the Company, on August 12, had sent the employees a letter stating that, upon the disestablishment of the Hourly Employees Committee, a "new grievance procedure and a new means of direct communication will be announced. We are confident that these new programs will satisfy your needs for employee representation." The letter added that there "is no need to hurriedly sign any card," and requested that such action be postponed until the employees have "consider[ed] our employee-employer relationship in light of the new procedures which we will establish" (Cuneo Aff., Exh. C).

Five days later, on August 23, petitioner announced the establishment of a new four-step grievance procedure for the New Jersey plants, effective immediately—its Employee Counselor Plan. Under the new procedure (Cuneo Aff., Exh. F, p. 4), the employee would handle his own grievance in the first step, but he could, "if he wishes, request representation" in the succeeding steps. Pursuant to this program, "If the employee desires this assistance he may choose as his counselor either:

1. The Employee Counselor assigned to his plant from the Personnel Department, or
2. An hourly employee within his plant and department who, at that time, is not otherwise involved in any steps of this procedure" [*ibid.*].

The Company's letter urged the employees "to use this [new] method of airing their grievances [and] to use one of the methods of representation" provided for (*id.* at 1).

The following week, petitioner announced the appointment of three employee counselors. Their weekly salaries, paid by the Company, ranged from $155 to $245 (Cuneo Aff., Exhs. G, H, p. 2). In February 1966, the Company announced in its monthly newspaper, *Aerofacts*, that the "number of those permanently assigned to this employee representation program" had been raised to four (Cuneo Aff., Exh. I, p. 3). Twice the Company advertised job openings in the employee counselor program by posting a notice with the following job description (Cuneo Aff., Exhs. J, K; Pet. App. vi):

ADMINISTRATIVE:

EMPLOYEE COUNSELOR—PERSONNEL DEPARTMENT

Represent hourly employees in all aspects of employee relations. Counsels employees in areas of insurance, hospitalization, wage rates, and job classifications. Represents hourly employees as a direct link with top management on working conditions, morale and safety practices. Knowledge of personnel practices, policies, and procedures necessary, knowledge of job analysis is desirable. Plant # 1 Shift # 1 (JPY Ext. 2916).

In the first seven months of the plan, the Company processed a total of 75 written grievances and the employee counselors assisted in 52 of these (Cuneo Aff., Exhs. L, M). Two of the counselors who served during this period formerly served as employee representatives on the Hourly Employees Committee (Petition for Adjudication in Civil Contempt, par. V; Answer, par. First).

The court of appeals found that the Employee Counselor Plan was a "successor" to the Hourly Employees Committee, and that the plan was "in reality merely a careful continuation of [the Company's] determined effort to dominate and interfere with its employees right to self-organization" (Pet. App. vii, ix). Accordingly, the court concluded that the Company had wilfully violated the decree previously entered and was thus guilty of civil contempt (Pet.

App. xiii).[3] The court entered an appropriate decree requiring the Company to purge itself of the contempt (App., *infra*, pp. 12-14).

ARGUMENT

The holding of the court below that petitioner's Employee Counselor Plan constituted a continuation of the illegal domination and interference proscribed by the court's earlier decree turns on the facts of this particular case, and is clearly correct. Accordingly, there is no occasion for further review.

1. The basic issue which petitioner seeks to raise —*i.e.*, whether it is illegal for supervisory members of an employer's personnel department to counsel and assist rank-and-file employees with respect to their grievances (Pet. 2, 11-14)—is not presented on the record here. The court below found that the employee counselors, who were hired and paid by the Company, did more than merely counsel and assist the employees; rather, they were intended to, and in fact did, represent the employees in dealing with top management on grievances and other matters of employee concern (Pet. App. vii-viii). Since the latter activity by individuals selected and paid by the employer would clearly constitute a form of employer domination of, and interference with, the employees' bar-

[3] The court below also found that the Company wilfully violated the decree by appointing employee representatives to the committee which administers its non-contributory pension plan (Pet. App. xii). Petitioner does not challenge that finding here.

gaining representative barred by Section 8(a)(2) of the Act,[4] the only question really presented is whether the evidence supports the court's finding. That issue does not warrant review by this Court. Moreover, as we shall show, the record fully supports the finding of the court below.

Thus, right after the Company was ordered to disestablish the Hourly Employees Committee, which it had created for the purpose of representing the employees in connection with grievances and other matters, it advised its employees, by letter, that the "present Company policies and procedures would be revised to provide for grievance assistance and communication through channels other than the now dissolved" committee. Shortly thereafter, the Company announced the establishment of its Employee Counselor Plan for handling employee grievances, under which an employee could, "if he wishes, request representation," and choose as his counselor either a fellow employee or the "Employee Counselor assigned to his plant from the Personnel Department." The employer counselors were selected and paid by the Company, two of them being former members of the Hourly Employees Committee. Notices posted by the Company listed the function of the employee counselors as follows: "Represents hourly employees as a

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[4] See *National Labor Relations Board* v. *Cabot Carbon Co.*, 360 U.S. 203; *National Labor Relations Board* v. *Saxe-Glassman Shoe Corp.*, 201 F. 2d 238, 244 (C.A. 1); *National Labor Relations Board* v. *Stow Mfg. Co.*, 217 F. 2d 900, 904 (C.A. 2); *American Enka Corp.* v. *National Labor Relations Board*, 119 F. 2d 60, 62-63 (C.A. 4).

direct link with top management on working conditions, morale and safety practices." In the first seven months of the plan, the employee counselors assisted in 52 of the 75 written grievances processed by the Company (see generally *supra*, pp. 5-6).

On these uncontraverted facts, the court below was fully warranted in concluding that the avowed purpose of the employee counselors was to deal "with management on behalf of the employees," and that, by the Employee Counselor Plan, the Company "is once more dominating the sole organization available to its employees with respect to their entire relationship to their employer including the handling of their grievances" (Pet. App. vii, viii).[5]

2. There is no substance to petitioner's contention (Pet. 17-25) that the issues presented were not appropriate for resolution in a contempt proceeding. Paragraph 1(a) of the court's prior decree required the Company to cease and desist from "[d]ominating and interfering with the administration of the Hourly Employees Committee, or any successor thereto with-

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[5] Indeed, the court below stated that "the Board's finding that the respondent's current plan is a successor labor organization to its H.E.C. and of the same ilk, is founded upon overwhelming evidence on the whole case" (Pet. App. ix). Petitioner's reliance (Pet. 24) on *National Labor Relations Board* v. *O. E. Szekely & Associates*, 259 F. 2d 652 (C.A. 5), and *National Labor Relations Board* v. *Landis Tool Co.*, 145 F. 2d 152 (C.A. 3), on the "successorship" question, is misplaced. As pointed out by the court below (Pet. App. xi), nothing in these cases is contrary to its conclusion that the new plan was the successor of the earlier one within the meaning of the Act. Indeed, the court applied the test enunciated in these cases in assessing the instant situation (*ibid.*).

in the meaning of the Act" (Pet. App. ii). The decree thus specifically contemplated that questions of successorship might arise in subsequent proceedings to determine whether the court's decree had been complied with. Nor is there anything novel about the court's finding that the Employee Counselor Plan was a successor to the Hourly Employees Committee (Pet. 15-16, 23-25). That determination does not rest merely on the circumstance that the former succeeded the latter in point of time, but on all of the relevant facts, which, as the court correctly held, make it evident that the "Employee Counselor Plan is in reality merely a careful continuation of [the Company's] determined effort to dominate and interfere with its employees right to self-organization" (Pet. App. vii).

Moreover, the court below was fully justified in concluding that the Employee Counselor Plan also violated paragraph 1(b) of its prior decree, which barred the Company from "[i]n any manner, interfering with, restraining, or coercing its employees in the exercise of their right * * * to bargain collectively through representatives of their own choosing" (Pet. App. ii). Not only was petitioner's action another form of interference, but, on the findings of the court below, it was "substantially identical" (Pet. App. xi) to the conduct previously found to be illegal. See *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192-193.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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OCTOBER 1967.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16,132
[No. 15,600]

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GENERAL PRECISION, INC., RESPONDENT

ORDER ON PETITION FOR ADJUDICATION IN CIVIL CONTEMPT

PRESENT: McLaughlin and Ganey, Circuit Judges, and Nealon, District Judge

This matter having come on to be heard on April 4, 1967, upon the Board's motion for summary adjudication of the respondent in civil contempt of the decree entered herein on October 28, 1965, now on all the papers heretofore filed by petitioner and respondent and upon all the proceedings heretofore had herein it is hereby

ORDERED that the respondent is hereby adjudicated in civil contempt of the decree of October 28, 1965, for wilfully failing and refusing to comply with the cease-and-desist provisions thereof; and it is

FURTHER ORDERED that respondent, its officers and agents, shall purge themselves of said contempt by:

(1) Disestablishing and ceasing and desisting from maintaining or giving any effect to its Employee Counselor Plan, or to any other plan

whereby respondent directly or indirectly appoints or provides representatives to assist or counsel employees in the prosecution of grievances, or to otherwise deal on their behalf with respondent concerning grievances.

(2) Removing from office the incumbent employee representatives on the pension plan's Central Committee of Administration.

(3) Ceasing and desisting from appointing, directly or indirectly, the employee representatives on the Central Committee of Administration or any other body administering or dealing with the Company with respect to its pension plan.

(4) Otherwise forthwith complying in full with each and every provision of the Court's decree of October 28, 1965.

(5) Immediately posting in conspicuous places at each and every plant of respondent in the State of New Jersey, including all places where notices to employees are customarily posted, for a period of sixty (60) consecutive days, copies of a notice, signed by the Company, by an officer thereof, which states that the Company has been adjudicated in civil contempt for disobedience of the Court's decree as set forth in this Order, and that the Company will take the action in purgation as herein provided;

(6) Posting a copy of this order along side said notice;

(7) Maintaining such notices and copies of this order in clearly legible condition throughout such posting period, taking reasonable precau-

tions that they are not altered, defaced or covered by any other matter;

(8) Promptly mailing to each hourly employee at respondent's New Jersey plants a copy of such notice and order.

(9) Filing sworn statements with the Clerk of the Court and copies thereof with the Director of the Twenty-second Region in writing, within ten (10) days after the entry of the order of adjudication, showing what steps have been taken by respondent to comply with the Court's directions.

(10) Paying to the Board its costs herein, the amount to be submitted by the Board and approved by the Court by further order herein, for counsel fees and all other costs and expenditures incurred in the investigation, preparation, presentation and final disposition of this proceeding.

In order to insure compliance with the foregoing provisions, it is

FURTHER ORDERED that upon the failure of the respondent to purge itself of contempt as herein provided, this Court will deal further with the matter by imposing a compliance fine of $5,000 on the respondent, and a further compliance fine of $250 per day, so long as such non-compliance continues, and by such other means as the Court shall then determine, including the issuance of body attachment upon any officer or agent responsible for such noncompliance.

Done and ordered at Philadelphia, Pennsylvania, this 4th day of August, 1967.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 278319 295